



18 DEC 2008

KLAUBER & JACKSON
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In re Application of	:	
SMITH et al.	:	DECISION ON PETITION
Serial No.: 10/585,373	:	
PCT No.: PCT/GB05/00033	:	UNDER 37 CFR §§1.47(a) and
Int. Filing Date: 07 January 2005	:	
Priority Date: 07 January 2004	:	1.137(b)
Atty Docket No.: 2713-1-045PCT/US	:	
For: MODIFIED MOLECULAR ARRAYS	:	

This decision is in response to applicant's "PETITION PURSUANT TO 37 CFR 1.47(a)" filed 20 October 2008 to accept the application without the signature of joint inventor Jean-Ernest SOHNA SOHNA. Petitioner also filed a petition under 37 CFR 1.137(b).

BACKGROUND

On 21 July 2006, applicant filed a Transmittal Letter requesting national stage entry for international application PCT/GB05/00033 along with the basic national fee.

On 15 November 2007, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period, was required. The notification set a two month time period within which to reply, with extensions of time available pursuant to 37 CFR 1.136(a).

On 15 June 2008, the application went abandoned for failure to respond to the Notification of Missing Requirements. On 19 June 2008, a Notification of Abandonment was mailed to applicant indicating such.

On 20 October 2008, applicant filed a petition to revive the unintentional abandonment of the application along with a petition under 37 CFR 1.47(a) to accept the application without the signature of joint inventor Jean-Ernest SOHNA SOHNA.

DISCUSSION

Petition under 37 CFR 1.137(b)

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply unless previously filed, (2) the petition fee required by law; (3) a statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition pursuant to this paragraph was unintentional"; and (4) if applicable, any terminal disclaimer and fee required pursuant to 37 CFR 1.137(b).

With respect to Item (1), the required reply was submitted with the declaration executed by the inventors in compliance with 37 CFR 1.497 (a) and (b) and petition under 37 CFR 1.47(a). Applicant has satisfied Item (1) of a grantable petition. Applicant paid the required petition fee, satisfying Item (2). Item (3) above is satisfied because the present petition includes a statement that "the application was unintentionally abandoned". This statement has been interpreted as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office. Item (4) is not applicable to the present application. In light of the above, the petition to revive is granted.

Petition under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Items (1) is satisfied by the payment of the \$130 petition fee. The last known address of the nonsigning inventor was provided, satisfying Item (3) above. Item (4) is satisfied by the submission of a declaration executed by the joint inventor on their behalf and on behalf of the nonsigning inventor Jean-Ernest SOHNA SOHNA.

With respect to Item (2) above, Petitioner presented sufficient evidence to show that Mr Jean-Ernest SOHNA SOHNA was presented with and received a complete copy of the application papers including a declaration and that by a letter communication dated, he refused to sign the application papers. The requirements of 37 CFR 1.47(a) are satisfied. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

CONCLUSION

For the above reasons, the petition under 37 CFR §1.47(a) is **GRANTED**.

The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

The U.S. Designated/Elected Office has accepted the application as a 37 CFR 1.47(a) application using the declaration filed 20 October 2008. The application has an international filing date of 07 January 2005 under 35 U.S.C. 363, and a date of 20 October 2008 under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.

A handwritten signature in black ink, appearing to read "Cynthia M. Kratz", with a stylized flourish at the end.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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For: MODIFIED MOLECULAR ARRAYS

DECISION ON PETITION
UNDER 37 CFR §§1.47(a) and
1.137(b)

Dear Mr. Sohna Sohna:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. § 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.


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